REMARKS

This responds to the Office Action dated on November 27, 2006.

Claims 1-3 are amended, no claims are canceled or added; as a result, claims 1-17 remain pending in this application. The amendments clarify a group aspect of the claims and are not in response to an art based rejection.

§112 Rejection of the Claims

Claims 1-17 were rejected under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. In particular, the Office Action states the Examiner's opinion that it was unclear how claim elements reciting a communications proposal message and a commit message relate to the detection of failure at a node or the transfer of applications from the failed node to other nodes." Applicant has amended claims 1-3 to clarify that a group is formed using the proposal message and the commit message and that node failures and transfers of applications take place within the group. Applicant respectfully submits that the claims are not incomplete and that the amendments overcome the rejection. Applicant thus respectfully requests reconsideration and the withdrawal of the rejection of claims 1-17 under 35 U.S.C. § 112.

§102 Rejection of the Claims

Claims 1-17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Frank et al. (U.S. Patent No. 6,532,494). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). Applicant respectfully traverses the rejection and submits that the Office Action did not make out

a *prima facie* case of anticipation because the claims contain elements not found in Frank.

For example, claim 1 recites that membership in a group is established by messages "communicated between the plurality of nodes in the network utilizing a proposal message sent by the coordinator node for receipt by each node in the plurality of nodes and a commit message sent to each of the plurality of nodes after receiving acknowledgement that the proposal message has reached each node of the plurality of nodes." The Office Action asserts that Frank, at column 5, lines 44-62, and at column 2, lines 5-13 discloses the recited language, stating that "if a node fails to receives heartbeat messages from its previous node, a reconfiguration message is then send [sic] by that node to all other nodes; once all other nodes acknowledge their existence in the group, the node membership is once again reconciled." While Frank discloses the use of a heartbeat message, Applicant notes that a heart beat message is different from the proposal and commit messages recited in Applicant's claims. As stated in Frank, a heartbeat message is one that is intended to inform "each other node that it is operating and is still a member of the network cluster" (see Frank at column 1, line 66 to column 2, line 1). Further, Frank states that "each node sends and receives a <u>single message</u>" (see Frank at column 2, lines 23-34, emphasis added). Thus it is clear from Frank that a single type of message, a heartbeat message is used to determine that a node is still in a network cluster. This is unlike Applicant's claims, which recite two message types, a proposal message and a commit message that are used to establish group membership. While Frank does disclose a second message referred to as a "cluster reconfiguration message", this reconfiguration message merely signals the need to redetermine cluster membership, it does not appear to be involved in determining which nodes are members of the cluster. In view of the above, Applicant respectfully submits that Frank fails to disclose each and every element of Applicant's claim 1. As a result, Frank does not anticipate claim 1. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claim 1.

Claims 2 and 3 recite similar language with respect to the proposal and commit messages of claim 1, and were rejected under the same rationale as claim 1. Applicant respectfully submits that claims 2 and 3 are not anticipated by Frank for the same reasons as discussed above with respect to claim 1. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 2 and 3.

Claims 4-7 depend either directly or indirectly from claim 1; claims 8-12 depend either directly or indirectly from claim 2; and claims 13-17 depend either directly or indirectly from claim 3. These dependent claims inherit the elements of the respective base claims 1-3, and are therefore not anticipated by Frank for at least the reasons discussed above regarding their respective base claims. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 4-7, 8-12 and 13-17.

Additionally, claims 5, 9 and 14 recite "the coordinator node comprises a longest running node in the plurality of nodes." The Office Action asserts that Frank, at column 7, lines 21-27 discloses the recited language. Applicant respectfully disagrees with this interpretation of Frank. The cited section of Frank states that "one method for selecting a coordinator node is to select the first node to join the cluster." Frank further states that "an alternate method is to select the node having the highest, or lowest, node id." Applicant notes that neither of these two mechanisms is necessarily the same as selecting a longest running node. The assignment of node ids is not necessarily based on the length of time a node is running. Similarly, the first node to join a cluster may be first based on its proximity to other nodes or its network response time, and may have nothing to do with how long the node has been running. Selecting a longest running node has the potential advantage of selecting a stable node as the coordinator node. In view of the above, Frank does not disclose selecting a longest running node as a coordinator node. Therefore Frank does not anticipate claims 5, 9 or 14. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 5, 9 and 14.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference.

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111
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Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this ___ day of March 2007.

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Name   Signature